

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-11-30,129

In re: 111 Rhode Island Avenue, NW, Unit #1

Ward Five (5)

PAUL COLLINS
Housing Provider/Appellant

v.

NINA NWAObILO
Tenant/Appellee

ORDER DISMISSING APPEAL

March 16, 2016

SZEGEDY-MASZAK, CHAIRMAN. This case is on appeal to the Rental Housing Commission (Commission) from a final order issued by the Office of Administrative Hearings (OAH) based on a petition filed in the Rental Accommodations Division (RAD) of the District of Columbia Department of Housing and Community Development (DHCD).¹ The applicable provisions of the Rental Housing Act of 1985 (Act), D.C. Law 6-10, D.C. OFFICIAL CODE §§ 42-3501.01-3509.07 (2001), the District of Columbia Administrative Procedure Act (DCAPA), D.C. OFFICIAL CODE §§ 2-501-510 (2001), and the District of Columbia Municipal Regulations (DCMR), 1 DCMR §§ 2800-2899 (2004), 1 DCMR §§ 2920-2941 (2004), 14 DCMR §§ 3800-4399 (2004) govern these proceedings.

¹ OAH assumed jurisdiction over tenant petitions from the Department of Consumer and Regulatory Affairs (DCRA), Rental Accommodations and Conversion Division (RACD) pursuant to the Office of Administrative Hearings Establishment Act, D.C. Law 14-76, D.C. OFFICIAL CODE § 2-1831.03(b-1)(1) (2007 Repl.). The functions and duties of RACD in DCRA were transferred to DHCD by § 2003 the Fiscal Year 2008 Budget Support Act of 2007, D.C. Law 17-20, D.C. OFFICIAL CODE § 42-3502.04b (2010 Repl.).

I. PROCEDURAL HISTORY

On October 4, 2011, Tenant/Appellee Nina Nwaobilo, resident of 111 Rhode Island Avenue, NW, Unit #3, (Housing Accommodation) filed Tenant Petition RH-TP-11-30,129 (Tenant Petition) with RAD, against Paul Collins (Housing Provider). *See* Tenant Petition at 1; Record for RH-TP-11-30,129 (R.) at 16. Evidentiary hearings were held on December 19, 2011, and January 30, 2012.

Administrative Law Judge Caryn Hines (ALJ) issued a final order on September 22, 2015: Nwaobilo v. Collins, RH-TP-11-30,129 (OAH Sept. 22, 2015) (Final Order); R. at 61-98. The ALJ determined that the Tenant had proven that the Housing Provider had substantially reduced services and facilities at the Housing Accommodation, and awarded the Tenant \$566.71 in damages. Final Order at 36-38; R. at 61-63.

On October 20, 2015, the Housing Provider filed a “Motion for Reconsideration” of the Final Order. Motion for Reconsideration at 1; R. at 101. The ALJ issued an order denying the motion on November 16, 2015. Nwaobilo v. Collins, RH-TP-11-30,129 (OAH Nov. 16, 2015) (Order on Reconsideration); R. at 103-108. The ALJ found that the Motion for Reconsideration had not been filed within the ten-day deadline specified by 1 DCMR § 2828.3,² and therefore treated the motion as a motion for relief from the Final Order, under 1 DCMR § 2828.7.³ *Id.* at 3; R. at 106. The ALJ further found that the Housing Provider did not present any basis for relief

² 1 DCMR § 2828.3 provides the following: “[w]ithin the ten (10) calendar days after a final order has been served, any party may file a motion asking the Administrative Law Judge to change the final order. Such a motion is a ‘motion for reconsideration or for a new hearing.’”

³ 1 DCMR § 2828.7 provides the following: “[a]fter the ten (10) calendar day deadline [for filing a motion for reconsideration], a party may file a motion asking the Administrative Law Judge to change the final order. A motion filed under this Subsection is a ‘motion for relief from final order.’”

under 1 DCMR § 2828.10,⁴ and denied the Motion for Reconsideration. *Id.* at 4; R. at 105. In the Order on Reconsideration, the ALJ stated the following: “Any motion for relief from the [F]inal [O]rder has no effect on the deadline for seeking judicial review of the [F]inal [O]rder.” *Id.* (citing 1 DCMR § 2828.8).⁵

The Housing Provider filed two documents with the Commission: the first, on October 23, 2015, a copy of the Motion for Reconsideration that had been filed with OAH, and the second, on December 4, 2015, a motion to dismiss the Tenant Petition (Notice of Appeal).⁶

II. PRELIMINARY ISSUE: TIMELINESS OF APPEAL

Under the Act and its regulations, the time limit for filing an appeal with the Commission

⁴ 1 DCMR § 2828.10 provides a list of the eight reasons that an Administrative Law Judge must use to change a final order based on a motion for relief. These include the following:

- (a) Mistake, inadvertence, surprise, or excusable neglect;
- (b) Newly discovered evidence that by due diligence could not have been discovered in time to file a motion for reconsideration or for a new hearing within the ten (10) calendar day deadline;
- (c) Fraud, misrepresentation, or other misconduct of an adverse party;
- (d) The final order is void;
- (e) A prior judgment on which the final order is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application;
- (f) The party filing the motion did not attend the hearing, has a good reason for not doing so, and states an adequate claim or defense;
- (g) The party filing the motion did not file a required answer to a Notice of Infraction, or Notice of Violation or did not file some other required document, has a good reason for not doing so, and states an adequate claim or defense; or
- (h) For good cause shown, the Government may ask that a final order issued in its favor be set aside.

⁵ 1 DCMR § 2828.8 provides the following: “[a]ny motion for relief from the final order has no effect on the deadline for seeking judicial review of the final order.”

⁶ The Commission, in its discretion, interprets the *pro se* pleading entitled “Motion to Dismiss” as a notice of appeal. The Commission is mindful of the important role that *pro se* litigants play in the Act’s enforcement. *See, e.g., Goodman v. D.C. Rental Hous. Comm’n*, 573 A.2d 1293, 1298-99; (D.C. 1990); *Barnes-Mosaid v. Zalco Realty, Inc.*, RH-TP-08-29,316 (RHC Sept. 28, 2012) (Order Denying Motion for Reconsideration); *Chen v. Moy*, RH-TP-08-29,340 (RHC Mar. 27, 2012).

is mandatory and jurisdictional. *See, e.g., Woodner Apartments v. Taylor*, RH-TP-07-29,040 (RHC Sept. 1, 2015); *Salazar v. Varner*, RH-TP-09-29,645 (RHC June 16, 2015); *Gelman Mgmt. Co. v. Campbell*, RH-TP-09-29,715 (RHC Mar. 11, 2015). Under 14 DCMR § 3802.2,⁷ a notice of appeal must be filed within ten days after a final decision is issued, plus three days if the decision was mailed to the parties. The ten days do not include intermediate weekends or holidays. 14 DCMR § 3816.3.⁸

If a party files a timely motion for reconsideration with OAH, an ALJ has forty-five days to decide the motion, otherwise the motion is denied by operation of law. 1 DCMR §§ 2828.15.⁹ The time period for filing an appeal with the Commission does not begin to run until the ALJ decides the motion for reconsideration within the forty-five day time period, or the motion is denied by operation of law. 1 DCMR §§ 2828.4; 14 DCMR § 2938.2.¹⁰ A motion for relief under 1 DCMR § 2828.7 does not affect the time period for filing an appeal with the Commission. 1 DCMR §§ 2828.8 & 2938.3; *see also, e.g., Dorchester House Assocs., LLC v.*

⁷ 14 DCMR § 3802.2 provides the following: “[a] notice of appeal shall be filed by the aggrieved party within ten (10) days after a final decision of the Rent Administrator is issued; and, if the decision is served on the parties by mail, an additional three (3) days shall be allowed.”

⁸ 14 DCMR § 3816.3 provides the following: “[w]hen the time period prescribed or allowed is ten (10) days or less, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.”

⁹ 1 DCMR § 2937.4 provides, in relevant part, the following: “[a]n Administrative Law Judge should rule on any motion filed under this Section within forty-five (45) calendar days of its filing. If an Administrative Law Judge has not done so, the motion is denied as a matter of law.”

¹⁰ 1 DCMR § 2828.4 provides the following:

[i]f a party files a motion for reconsideration or for a new hearing within the ten (10) calendar day deadline, the time for seeking judicial review of a final order does not start to run until the Administrative Law Judge rules on the motion, or the motion is denied as a matter of law under Subsection 2828.15.

1 DCMR § 2938.2 provides, in relevant part, as follows:

[i]f any party files a motion for reconsideration or for a new hearing within the ten (10) calendar day deadline specified in Subsection 2828.3, an Order will not be final for purposes of appeal to the Commission until the Administrative Law Judge rules on the motion or the motion is denied as a matter of law under Subsection 2828.15.

Tenants of 2480 16th St., NW, RH-SF-09-20,098 (RHC Sept. 18, 2013) (explaining that a motion for relief does not toll the time for filing an appeal with the Commission).

The Final Order in this case was served on the parties, by mail, on September 22, 2015. The ten day time period for filing a notice of appeal with the Commission, under 14 DCMR § 3802.2, allowing three days for service by mail and excluding intermediate weekends and holidays, expired on October 9, 2015, fourteen days before the Housing Provider filed the Motion for Reconsideration with the Commission, and nearly two months before the Housing Provider filed its Notice of Appeal with the Commission. 14 DCMR §§ 3802.2 & 3816.3; Final Order at 1; R. at 98; Notice of Appeal at 1; Motion for Reconsideration. Moreover, the ten calendar day time period for filing a motion for reconsideration with OAH, allowing five days for service by mail in accordance with 1 DCMR § 2812.5, expired on October 7, 2015, thirteen days before the Housing Provider filed its Motion for Reconsideration. 1 DCMR § 2828.3; Final Order at 1; R. at 98; *see* Motion for Reconsideration.

Although the Commission notes that the Housing Provider filed a Motion for Reconsideration with OAH, the Commission's review of the record supports the ALJ's determination that the Motion for Reconsideration was untimely under 1 DCMR § 2828.3, and thus was properly interpreted as a motion for relief under 1 DCMR § 2828.7. As noted *supra* at 4, a motion for relief under 1 DCMR § 2828.7 does not affect (e.g., toll) the time period for filing an appeal with the Commission. 1 DCMR §§ 2828.8 & 2938.3; *see also, e.g.,* Dorchester House Assocs., LLC v. Tenants of 2480 16th St., NW, RH-SF-09-20,098 (RHC Sept. 18, 2013).

The Housing Provider's Motion for Reconsideration, therefore, did not toll the time period for filing an appeal with the Commission. 1 DCMR §§ 2828.8 & 2938.3; *see also, e.g.,* Dorchester House Assocs., LLC, RH-SF-09-20,098. Accordingly, the Commission determines

that the Housing Provider's appeal is untimely, and thus the Commission lacks jurisdiction over the issues raised therein. 14 DCMR § 3802.2; *see., e.g., Taylor*, RH-TP-07-29,040; *Salazar*, RH-TP-09-29,645; *Campbell*, RH-TP-09-29,715.

III. CONCLUSION

Based on the foregoing, the Commission dismisses the Housing Provider's appeal.

SO ORDERED.


PETER B. SZEGEDY-MASZAK, CHAIRMAN

MOTIONS FOR RECONSIDERATION

Pursuant to 14 DCMR § 3823 (2004), final decisions of the Commission are subject to reconsideration or modification. The Commission's rule, 14 DCMR § 3823.1 (2004), provides, "[a]ny party adversely affected by a decision of the Commission issued to dispose of the appeal may file a motion for reconsideration or modification with the Commission within ten (10) days of receipt of the decision."

JUDICIAL REVIEW

Pursuant to D.C. OFFICIAL CODE § 42-3502.19 (2001), "[a]ny person aggrieved by a decision of the Rental Housing Commission...may seek judicial review of the decision...by filing a petition for review in the District of Columbia Court of Appeals." Petitions for review of the Commission's decisions are filed in the District of Columbia Court of Appeals and are governed by Title III of the Rules of the District of Columbia Court of Appeals. The court may be contacted at the following address and telephone number:

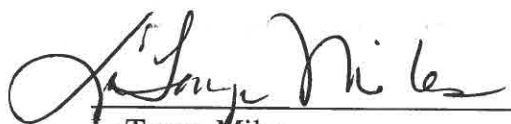
D.C. Court of Appeals
Office of the Clerk
Historic Courthouse
430 E Street, N.W.
Washington, DC 20001
(202) 879-2700

CERTIFICATE OF SERVICE

I certify that a copy of the **ORDER DISMISSING APPEAL** in RH-TP-11-30,129 was served this 16th day of March, 2016:

Paul Collins
1006 Douglas Street, NE
Washington, DC 20018

Nina Nwaobilo
1400 29th Street, SE, Apt. #7
Washington, DC 20020

A handwritten signature in black ink, appearing to read "LaTonya Miles", written over a horizontal line.

LaTonya Miles
Clerk of Court
(202) 442-8949